UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

JONATHAN MONSARRAT,)
Plaintiff,) CIVIL ACTION NO.) 1:17-cv-10356-PBS
v.)
BRIAN ZAIGER,	DEFENDANT BRIAN ZAIGER'S MOTION TO DISMISS FIRST AMENDED COMPLAINT
Defendant.	

Defendant Brian Zaiger hereby moves this Honorable Court dismiss Plaintiff's First Amended Complaint (Dkt. No. 47) pursuant to Fed. R. Civ. P. 12(b)(6).

The First Amended Complaint does not state a plausible claim. Not only is it time-barred, this action having been brought more than three years after Plaintiff Jonathan Monsarrat discovered the alleged infringement, it lacks merit. As the alleged works were registered more than five years after first publication, the registrations are not entitled to evidentiary weight. Plaintiff is not the author and, thus, lacks valid copyright over the photographic works at issue. The textual elements are insufficiently creative to be copyrightable. And, most important, as demonstrated by the exhibits to the First Amended Complaint, the alleged infringement constitutes fair use—all of it was properly transformed and used by third parties to criticize Plaintiff in a non-profit, educational manner.

In support hereof, Defendant refers this Court to the accompanying memorandum in support filed herewith.

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WHEREFORE Plaintiff respectfully requests this Honorable Court dismiss this action with prejudice.

Dated: October 30, 2017. Respectfully submitted,

/s/ Marc J. Randazza

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Attorneys for Defendant,

Brian Zaiger

CERTIFICATE OF CONFERRAL

Pursuant to L.R. 7.1, I hereby certify that on October 30, 2017, attorneys for the parties conferred via telephone and have attempted in good faith to resolve or narrow the issue.

/s/ Marc J. Randazza Marc J. Randazza

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on October 30, 2017.

/s/ Marc J. Randazza Marc J. Randazza